

**HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
And
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY**

WRIT APPEAL NO.997 OF 2006

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Between:
S.Rashmi and two others.

..... Appellants

AND

State of Andhra Pradesh,
Represented by its Secretary,
Higher Education, Secretariat Buildings,
Hyderabad and three others.

.....Respondents

::JUDGMENT::

Counsel for the Appellants : Sri.Ch.Samson Babu

**Counsel for Respondent No.1 : Sri C.Sudesh Anand,
Government Pleader for
Higher Education.**

Dated 11/10/2006

Per Sri G.S.Singhvi, CJ

Whether the appellants, who secured Pre-University qualification from Janardhan Rai Nagar Rajasthan Vidyapeet, a Deemed University (hereinafter described as 'the University'), were eligible to be admitted in 1st year B.Tech course in Hasvita Institute of Engineering & Technology, Keesara Village, Ranga Reddy District (for short, 'the Institute') and the Andhra Pradesh State Council for Higher Education (for short, 'the State Council') committed an illegality by disapproving their admission, is the question which arises for determination in this appeal filed by them under Clause 15 of the Letters Patent.

The Facts:

After passing 10th Class examination conducted by the Andhra Pradesh Board of Secondary Education (for short, 'the Board'), the appellants are said to have studied Pre-University course under Distance Education Programme conducted by the University. They are said to have been awarded certificates by the University in October 2005. Thereafter, on the basis of spot admissions made by the management of the Institute, the appellants got admission in 1st year B.Tech. course for the academic session 2005-06. In February 2006, the State Council declined to approve the admission of the appellants on the ground that they do not fulfill the condition of eligibility prescribed under the Andhra Pradesh Professional Educational Institutions (Regulation of Admission into Under-Graduate

Professional Courses through Common Entrance Test) Rules, 1993 (for short, 'the Rules'). According to the State Council, Pre-University qualification obtained by the appellants is not equivalent to 10 + 2 examination and, therefore, they were not eligible to be admitted to the engineering course.

The appellants challenged the aforementioned decision of the State Council in Writ Petition No.9855 of 2006 by contending that the Pre-University course conducted by the University under the Distance Education Programme has been recognized as equivalent to Intermediate course by the Government of India, Ministry of Human Resources, Association of Indian Universities and the University Grants Commission (UGC) and, therefore, it is not open to the State Council to refuse to treat the same as equivalent to 10+2 examination.

A number of other candidates, who took admission in the engineering courses in different private colleges and institutions against the management quota, filed similar writ petitions questioning the decision of the State Council not to approve their admission. They too pleaded that the Pre-University course conducted by the University under the Distance Education Programme is equivalent to 10 + 2 examination conducted by the Board and, therefore, they were eligible to be admitted in the engineering courses.

In the counter affidavits filed on behalf of the official respondents, it was pleaded that the management of the private colleges could make admissions on the basis of merit in EAMCET conducted by the State or EAMCET conducted by the Association of Colleges or on the basis of rank obtained in All India Engineering Entrance Examination conducted by the Central Board of Secondary Education. However, in view of the directions given by the Supreme

Court on 23-9-2005 in Writ Petition (Civil) No.350 of 1993, the State Government issued G.O.Rt.No.974, Higher Education (EC) Department, dated 6-12-2005 for admission against the left-over seats from among the candidates who passed 10 + 2 or equivalent examination. According to the respondents, Pre-University course conducted by the University under the Distance Education Programme is not equivalent to 10 + 2 examination and, therefore, the admission of the petitioners was not approved.

In a separate common counter filed on behalf of the Board, it was pleaded that as per the provisions of the Andhra Pradesh Intermediate Education Act, 1971 (for short, 'the 1971 Act') and the regulations made thereunder, the Board is the only competent authority which could issue certificate of equivalence and that the Pre-University course conducted by the University was not treated equivalent to 10 + 2 examination. It was further pleaded that the Pre-University education does not come under the University Grants Commission Act, 1956 and, therefore, the UGC had no occasion to recognize the Pre-University course conducted by the University as equivalent to 10 + 2 examination. In the counter affidavit, reference was made to 52nd and 58th meetings of the Board wherein it was resolved not to treat Pre-University course as equivalent to Intermediate.

The learned Single Judge referred to the provisions of Sections 3 and 15 of the Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983, the rules framed thereunder, Sections 3 and 9 of the 1971 Act and held that the Board is the only authority competent to determine equivalence of the qualifications. The learned Single Judge further held that in the absence of determination of equivalence by the Board, the Pre-

University course conducted by the University cannot be treated equivalent to 10 + 2 examination and the petitioners who obtained Pre-University certificate after undergoing Distance Education Programme conducted by the University were not eligible to be admitted in the engineering courses. He also noted that the writ petitioners have not produced any material to show that the University was entitled to conduct course through Distance Education Programme outside Rajasthan and held that the Pre-University certificates obtained by the appellants was not sufficient to entitle them to seek admission in the engineering courses.

Shri Ch.Samson Babu, learned counsel for the appellants made strenuous efforts to persuade us to set aside the well-reasoned order passed by the learned Single Judge by arguing that the appellants were not at all at fault in seeking admission on the basis of Pre-University certificates awarded by the University. He submitted that if the admissions of the appellants are not protected, their career will be jeopardized. He then argued that the learned Single Judge committed a serious error by not examining the plea of discrimination raised by the appellants. Learned counsel pointed out that admission of one Vedantham Srinivas, who too had obtained Pre-University certificate from the University was approved by the State Council and argued that the appellants who had obtained similar qualification cannot be treated ineligible for admission to the engineering courses.

Learned counsel for the State Council candidly admitted that Vedantam Srinivas had been granted admission despite the fact that he did not possess the qualification of 10+2 or equivalent examination, but made a feeble attempt to justify the same by stating that it was a case of mistake.

In our opinion, the plea of discrimination raised by the

appellants merits rejection because the doctrine of equality enshrined in Article 14 of the Constitution does not postulate issue of a direction by the Court to a public authority to pass an illegal order or commit an illegality simply because the said authority had passed an illegal order in another case or committed such an illegality.

Article 14 of the Constitution of India, which is genus of the doctrine of equality, declares that the State shall not deny to any person equality before the law or the equal protection of laws within the territory of India. In the last 55 years, the Courts have given different dimensions to the doctrine of equality so as to bring every arbitrary action of the State and its functionaries within the ambit of the Court's power of judicial review. The ever expanding horizon of the equality clause has also encouraged filing of large number of petitions in which the petitioners seek relief solely on the premise that in the case of some other person the public authority has given relief. Till recently, the Courts had enforced equality clause and entertained the claim of such petitioners without going into the question whether the action taken by the State and/or public authority in the other case or order passed in favour of some other person is in consonance with law. But this trend has been reversed by the judgments of the Supreme Court in **Chandigarh Administration v. Jagjit Singh**, AIR 1995 SC 705, **Secretary, Jaipur Development Authority v. Daulat Mal Jain**, (1997) 1 SCC 35, **Gursharan Singh v. New Delhi Municipal Committee**, (1996) 2 SCC 459, **Faridabad CT. Scan Centre v. D.G. Health Services**, (1997) 7 SCC 752 and **Style (Dress land) v. Union Territory, Chandigarh**, (1999) 7 SCC 89.

The facts of **Jagjit Singh's** case were that the respondents who had given the highest bid for 338 sq. yds plot in Section 31A, Chandigarh defaulted in paying the price in accordance with the terms

and conditions of allotment. After giving him opportunity of showing cause, the Estate Officer cancelled the lease of the plot. The appeal and the revision filed by him were dismissed by the Chief Administrator and Chief Commissioner, Chandigarh respectively. Thereafter, the respondent applied for refund of the amount deposited by him. His request was accepted and the entire amount paid by him was refunded. He then filed a petition for review of the order passed by the Chief Commissioner, which was dismissed. However, the officer concerned entertained the second review and directed that the plot be restored to the respondent. The latter did not avail benefit of this unusual order and started litigation by filing writ petition in the High Court, which was dismissed on March 18, 1991. Thereafter, the respondent again approached the Estate Officer with the request to settle his case in accordance with the policy of the Government to restore the plots to the defaulters by charging forfeiture amount of 5%. His request was rejected by the Estate Officer. He then filed another writ petition before the High Court which was allowed only on the ground that in another case pertaining to Smt. Prakash Rani, Administrator had restored the plot even after her writ petition was dismissed by the High Court. The Chandigarh Administration challenged the order of the High Court by filing petition for special leave to appeal. While reversing the order of the High Court, their Lordships of the Supreme Court observed as under:-

“We are of the opinion that the basis or the principle, if it be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person

similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law indeed, wherever it is possible, the court should direct the appropriate authority to correct such wrong orders in accordance with law – but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioner's case is similar to the other person's case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the court and seeking the relief. It is not more appropriate and convenient to examine the entitlement of the petitioner before the court to the relief

asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the Court nor is his case. In our considered opinion, such a course – barring exceptional situations – would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world. (What is the position in the case of orders passed by authorities in exercise of their quasi-judicial power, we express no opinion. That can be dealt with when a proper case arises).”

In **Secretary Jaipur Development Authority vs. Daulat Mal**

Jain (supra), the Supreme Court held as under:

“The illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly, would not form a legal premise to ensure it to the respondent or to repeat or perpetuate such illegal order, nor could it be legalized. In other words, judicial process cannot be abused to perpetuate the illegalities. Article 14 proceeds on the premise that a citizen has legal and valid right enforceable at law and persons having similar right and persons similarly circumstanced, cannot be denied of the benefit thereof. Such person cannot be discriminated to deny the same benefit. The rational relationship and legal back-up are the foundations to invoke the doctrine of equality in case of

persons similarly situated. If some persons derived benefit by illegality and had escaped from the clutches of law, similar persons cannot plead, nor the Court can countenance that benefit had from infraction of law and must be allowed to be retained. One illegality cannot be compounded by permitting similar illegal or illegitimate or ultra vires acts.”

In **Gursharan Singh v. New Delhi Municipal Committee** (supra), the Supreme Court refused to invoke Article 14 of the Constitution of India for giving relief to the appellant and observed:

“Under Article 14 guarantee of equality before law is a positive concept and it cannot be enforced by a citizen or court in a negative manner. If an illegality or irregularity has been committed in favour of any individual or a group of individuals, others cannot invoke the jurisdiction of the High Court or of the Supreme Court, that the same irregularity or illegality be committed by the State or an authority which can be held to be a State within the meaning of Article 12 of the Constitution, so far such petitioners are concerned, on the reasoning that they have been denied the benefits which have been extended to others although in an irregular or illegal manner. Such petitioners can question the validity of orders which are said to have been passed in favour of persons who were not entitled to the same, but they cannot claim orders which are not sanctioned by law in their favour on principle of equality before law.”

In **Faridabad CT Scan Centre v. D.G. Health Services** (supra), the three Judges Bench of the Supreme Court over ruled the earlier decision of the two Judges Bench and held:

“Article 14 cannot be invoked in cases where wrong orders are issued in favour of others. Wrong orders cannot be perpetuated with the help of Article 14 on the basis that such wrong orders were earlier passed

in favour of some other persons and that, therefore, there will be discrimination against others if correct orders are passed against them. The benefit of the exemption notification, in the present case, cannot, therefore, be extended to the petitioner on the ground that such benefit has been wrongly extended to others.”

The question which remains to be considered is whether the appellants were qualified to be admitted to the engineering courses and refusal of the State Council to approve their admission is legally unsustainable.

It is an undisputed position that the conditions of eligibility for admission to Engineering courses are prescribed under Rule 4 (iii) of the Rules. It is also not in dispute that the power to determine equivalence is expressly conferred on the Board in terms of Section 9(xii) of the 1971 Act and on more than one occasion, the Board took a conscious decision that Pre-University certificate issued by the university is not equivalent to 10+2 examination. The appellants have not questioned the legality of the decision taken in the 52nd and 58th meetings of the Board. Therefore, it is not possible to entertain their prayer for issue of a judicial fiat to the respondents to regularise their admission.

The question whether the Court can ordain a public authority to treat a particular examination or course equivalent to another examination or course must be answered in negative in view of the judgments of the Supreme Court in **Rajendra Prasad Mathur v. Karnataka University**^[1], **Director, All India Institute of Medical Sciences v. Dr. Nikhil Tandon**^[2] and **State of Rajasthan v. Lata Arun**^[3] and of this Court in **Board of Adult Education and Training**

v. Board of Intermediate Education^[4].

We may add that neither the Board nor any statutory authority could have treated Pre-University course conducted by the University as equivalent to 10+2 course because it is neither the pleaded case of the appellants nor any material has been placed on the record of the appeal to show that the appellants had done experiments in the subjects of Physics and Chemistry in the laboratories under the Distance Education Programme.

No other point has been argued.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP No.2125 of 2006 filed by the appellants for interim relief is also dismissed.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY, J

11.10.2006

msv

^[1] AIR 1986 SC 1448

^[2] (1996) 7 SCC 741

^[3] (2002) 6 SCC 252

^[4] (2003(6) ALT 761 (DB)